

1 BRYAN J. FREEDMAN (State Bar No. 151990)
2 STEVEN B. STIGLITZ (State Bar No. 222667)
3 FREEDMAN & TAITELMAN, LLP
4 1901 Avenue of the Stars, Suite 500
5 Los Angeles, CA 90067
6 Telephone: (310) 201-0005
7 Facsimile: (310) 201-0045
8 E-mail: BFreedman@ftllp.com; SStiglitz@ftllp.com

Attorneys for Plaintiff Penske Media Corporation

7 EVE H. WAGNER (State Bar No. 126471)
8 ANTHONY D. SBARDELLATI (State Bar No. 246431)
9 SAUER & WAGNER LLP
10 1801 Century Park East, Suite 1150
11 Los Angeles, California 90067
12 Tel: (310) 712-8100; Fax: (310) 712-8108
13 E-mail: ewagner@swattys.com; asbardellati@swattys.com

11 JEREMY FEIGELSON (*of counsel*)
12 BRUCE P. KELLER (*of counsel*)
13 DEBEVOISE & PLIMPTON LLP
14 919 Third Avenue
15 New York, New York 10022
16 Tel: (212) 909-600; Fax: (212) 521-7230
17 Email: jfeigelson@debevoise.com; bpkeller@debevoise.com

Attorneys for Defendant Prometheus Global Media, LLC

17 UNITED STATES DISTRICT COURT
18 CENTRAL DISTRICT OF CALIFORNIA

19
20 PENSKE MEDIA CORPORATION,
21 dba PMC, a Delaware corporation,

22 Plaintiff,

23 v.

24 PROMETHEUS GLOBAL MEDIA,
25 LLC, a Delaware limited liability
26 company d/b/a hollywoodreporter.com;
27 and DOES 1 through 10, inclusive,

28 Defendants.

CASE NO. CV11-7560-FMO (MRW)

Hon. Fernando M. Olguin

**STIPULATION AND ORDER
OF DISMISSAL**

1 WHEREAS, Plaintiff Penske Media Corporation, the parent entity of
2 TVLine ("Penske") commenced this litigation on September 14, 2011 by filing a
3 complaint asserting a claim of copyright infringement against Defendant
4
5 Prometheus Global Media, LLC, the parent entity of The Hollywood Reporter
6 ("Prometheus," and together with Penske the "Parties," or each individually, a
7 "Party") (the "Complaint"); and
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9 WHEREAS Prometheus answered Penske's Complaint on December 16,
10 2011, denying liability and asserting that a good-faith error by an independent
11 contractor was the cause of the copying alleged in the Complaint; and
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13 WHEREAS both Parties wish to resolve this litigation without any further
14 proceedings and without any determination of liability;

15 NOW THEREFORE, it is stipulated and agreed, as of March 11, 2013 (the
16 "Effective Date"), as follows:
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18 1. Within ten business days of the filing of this so-ordered
19 Stipulation by the Clerk of Court, Prometheus shall pay to Penske by wire the
20 amount of one hundred sixty-two thousand and five hundred dollars (\$162,500.00),
21 such amount reflecting the exclusive payment in full settlement of this matter, and
22 such payment to be made according to wire instructions to be provided by Penske.
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25 2. The Parties agree that Penske may issue the following text as a
26 statement on behalf of both Parties:
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1 “Prometheus admits that the Hollywood Reporter copied source code from
2 Penske Media Corporation's website www.TVLine.com; Prometheus and the
3 Hollywood Reporter have apologized to Penske Media and pursuant to this
4 Stipulation have compensated Penske Media as a result; and both companies are
5 pleased that this matter has now been resolved.”
6

7 3.

8 a. Releases

9 i. General Releases. Except as otherwise expressly provided for in
10 paragraph 3(b) below, upon the completion of the payment provided in Section 1
11 herein, each of Penske and Prometheus hereby releases and discharges the other
12 Party from any and all claims, damages and causes of action whatsoever, whether
13 or not such claims are presently known or unknown, by reason of any matter, cause
14 or thing whatsoever, from the beginning of the world through the Effective Date.
15

16 ii. Limited Releases. Except as otherwise expressly provided for in
17 paragraph 3(b) below, upon the completion of the payment provided in Section 1
18 herein, each of Penske and Prometheus hereby releases and discharges the other's
19 current and former parents, affiliates and subsidiaries, as well as the officers,
20 employees, owners, shareholders, directors, partners, members, principals,
21 representatives, agents, contractors and attorneys of the other Party and of its
22 current and former parents, affiliates and subsidiaries, from any and all claims,
23 damages and causes of action to the extent such claims arise in any way from the
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1 allegations of the Complaint, whether or not such claims are presently known or
2 unknown, by reason of any matter, cause or thing whatsoever, from the beginning
3 of the world through the Effective Date. For the avoidance of doubt, the
4 beneficiaries of the release from Penske pursuant to this subparagraph in addition
5 to Prometheus include, but are not limited to, The Hollywood Reporter LLC,
6 Guggenheim Partners LLC, Pluribus Capital Management LLC, Nihaki Systems
7 Inc. and Mr. Irfan Ali.
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10 b. Notwithstanding anything to the contrary in this Stipulation, all
11 claims with respect to any hiring by one Party, or any of its parents, affiliates
12 or subsidiaries, of a person currently under a fixed-term contract to perform
13 services for the other Party or any of its parents, affiliates or subsidiaries,
14 where the hiring is consummated after the Effective Date are preserved and
15 not released.
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18 c. Each Party further acknowledges, agrees, represents and
19 warrants that (a) no claim subject to the releases herein has been assigned or
20 transferred, and that (b) that Party shall not now or at any time in the future
21 file or pursue in any court, administrative proceeding or other tribunal,
22 against any person or entity, any of the claims released pursuant to this
23 Stipulation.
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26 d. The releases herein shall not extend to any claims that the
27 Parties or their respective Associated Entities or each of their respective
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1 Associated Persons may later raise concerning any breach of this Agreement
2 or the enforcement of this Agreement.

3 4. The Parties acknowledge that there is a risk that subsequent to the
4 execution of this Stipulation, they may incur or suffer losses, damages or injuries
5 which are encompassed within the claims released herein, but which are unknown
6 or unanticipated at the time this Stipulation is signed. The Parties hereby assume
7 this risk and agree that the release in Section 3.a. of this Stipulation shall apply to
8 all unknown and unanticipated claims as well as those known and anticipated. As
9 to all releases of unknown claims in Section 3.a. herein, the Parties hereby
10 specifically waive the benefits of California Civil Code Section 1542 or any other
11 similar state or federal statute. Section 1542 has been fully explained to the Parties
12 and provides as follows:

13 **“A general release does not extend to claims which the creditor does not**
14 **know or suspect to exist in his or her favor at the time of executing the**
15 **release, which if known by him or her must have materially affected his**
16 **or her settlement with the debtor.”**

17 5. Each Party acknowledges, agrees, represents and warrants that with
18 respect to the agreement reflected in this Stipulation, (a) the agreement is a
19 compromise of disputed claims; (b) the agreement reflects their entire agreement
20 with respect to this matter, and that no promises, statements or inducements have
21 been made by either Party to the other apart from those expressly stated in this
22 Agreement; specifically, the Parties acknowledge that no other party nor any agent
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1 or attorney of any party has made any promise, representation or warranty
2 whatsoever, express or implied, not contained herein concerning the settlement to
3 induce them to execute this instrument, and further acknowledge that they have not
4 executed this instrument in reliance on any promise, representation or warranty not
5 contained herein; (c) each Party has full capacity to enter into the agreement and
6 does so after receiving advice of counsel; (d) each Party shall be responsible for
7 the payment of its own costs, attorneys' fees and all other expenses in connection
8 with this agreement; (e) the agreement shall be binding upon the Parties and their
9 respective successors and assigns; (f) the agreement may not be altered, amended,
10 waived, supplemented or modified except by an instrument in writing executed by
11 both Parties or their successors or assigns; and (g) given that both Parties have
12 participated in the drafting of this Stipulation with the assistance of counsel, the
13 Parties waive the benefit of California Civil Code Section 1654 and any successor
14 or amended statute, providing that in cases of uncertainty, language of a contract
15 should be interpreted most strongly against the party who caused the uncertainty to
16 exist.
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1 6. This case is dismissed with prejudice and without any award of
2 attorneys' fees or of costs. Upon the Court's endorsement below, the Clerk of
3 Court is directed to close the case.
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6 SO ORDERED:
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8 _____

9 DATED: March __, 2013

PENSKE MEDIA CORPORATION

11 By: /s/ Bryan J. Freedman
12 Freedman & Taitelman, LLP
13 Attorneys for Plaintiff

14 By: 
15 Jay Penske, Chief Executive Officer

16 DATED: March __, 2013

18 PROMETHEUS GLOBAL MEDIA, LLC

19 By: /s/ Eve H. Wagner
20 Sauer & Wagner LLP
21 Attorneys for Defendant

22 By: _____
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1 6. This case is dismissed with prejudice and without any award of
2 attorneys' fees or of costs. Upon the Court's endorsement below, the Clerk of
3 Court is directed to close the case.
4

5
6 SO ORDERED:
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8 _____

9 DATED: March __, 2013

PENSKE MEDIA CORPORATION

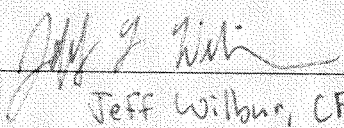
11 By: /s/ Bryan J. Freedman
12 Freedman & Taitelman, LLP
13 Attorneys for Plaintiff

14 By: _____
15 Jay Penske, Chief Executive Officer

16
17 DATED: March __, 2013

18 PROMETHEUS GLOBAL MEDIA, LLC

19 By: /s/ Eve H. Wagner
20 Sauer & Wagner LLP
21 Attorneys for Defendant

22 By: 
23 Jeff Wilbur, CFO
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1 I hereby attest that the concurrence in the filing of this document has been obtained
2 for all signatures indicated by a "conformed" signature (/s/) within this e-filed
3 document.

4 DATED: March __, 2013

SAUER & WAGNER, LLP

5 By: /s/ Eve H. Wagner

6 Attorneys for Defendant

7 PROMETHEUS GLOBAL MEDIA, LLC
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